

HOUSE BILL 941

By Carter

AN ACT to amend Tennessee Code Annotated, Title 34,  
relative to supported decision-making agreements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 34, is amended by adding the following  
as a new chapter:

**34-9-101.** This chapter shall be known and may be cited as the "Supported Decision-Making Agreement Act."

**34-9-102.** As used in this chapter:

(1) "Adult" means an individual eighteen (18) years of age or older or an individual under eighteen (18) years of age who has been legally emancipated;

(2) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities;

(3) "Supported decision-making" means a process of supporting and accommodating an adult with a disability to enable the adult to make life decisions, including decisions related to education; financial decisions; medical decisions including the services, supports, and medical care the adult wants to receive; and other life decisions such as with whom the adult wants to live and spend time and where the adult wants to work without impeding the self-determination of the adult;

(4) "Supported decision-making agreement" is an agreement between an adult with a disability and a supporter entered into under this chapter; and

(5) "Supporter" means an adult who has entered into a supported decision-making agreement with an adult with a disability.

**34-9-103.** The purpose of this chapter is to define and authorize a legal option for adults with disabilities who seek assistance in making certain decisions about their lives, such as financial, medical, and other life decisions, but choose to retain their rights as the ultimate decision-maker about those decisions rather than seeking a legal representative to make such decisions on their behalf.

**34-9-104.** An adult with a disability may voluntarily, without undue influence or coercion, enter into a supported decision-making agreement with a supporter of the adult's choosing under which the adult with a disability authorizes the supporter to do any or all of the following:

(1) Provide supported decision-making, including assistance in understanding the options, responsibilities, and consequences of the adult's life decisions, without making those decisions on behalf of the adult with a disability;

(2) Subject to § 34-9-107, assist the adult with a disability in accessing, collecting, and obtaining information that is relevant to a given life decision, including medical, psychological, financial, educational, or treatment records, from any person;

(3) Assist the adult with a disability in understanding the information described by subdivision (2); and

(4) Assist the adult with a disability in communicating the adult's decisions to appropriate persons.

**34-9-105.**

(a) A person with a disability in a supported decision-making agreement may engage the supporter named in the supported decision-making agreement to assist with making decisions and owes the supporter the following duties:

(1) To alert the supporter to the need for assistance;

(2) To listen to the information provided by the supporter and to ask questions;

(3) To consider the information provided by the supporter when making the decision; and

(4) To accept personal responsibility for the decision made.

(b)

(1) A supporter may exercise the authority granted to the supporter in the supported decision-making agreement.

(2) A supporter in a supported decision-making agreement is in a fiduciary relationship with the adult with a disability and owes the adult the duty to:

(A) Act in good faith;

(B) Act within the authority granted in the agreement;

(C) Act loyally and without self-motivation;

(D) Avoid conflicts of interest; and

(E) Disclose to the adult with a disability all facts known to the supporter relevant to making a decision.

**34-9-106.**

The supported decision-making agreement extends until terminated in writing by either party or by the terms of the agreement.

**34-9-107.**

(a) A supporter is only authorized to assist the adult with a disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.

(b) If a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §

1232g), the supporter shall ensure the information is kept privileged and confidential, as applicable, and is not subject to unauthorized access, use, or disclosure.

(c) The existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

**34-9-108.** A supported decision-making agreement must be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses, who must be at least eighteen (18) years of age, or a notary public.

**34-9-109.**

(a) Subject to subsection (b), a supported decision-making agreement is valid only if it is in substantially the following form:

**SUPPORTED DECISION-MAKING AGREEMENT**

**Appointment of Supporter**

I, (insert your name), make this agreement of my own free will.

I agree and designate that:

Name:

Address:

Phone Number:

E-mail Address:

is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N Making educational decisions;

Y/N Making financial decisions;

Y/N Making medical decisions, including the services, supports, and medical care I want to receive;

Y/N Making other life decisions I identify and seek support with, such as whom I live and spend time with and where I want to work.

My supporter is not allowed to make decisions for me. To help me with my decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;
2. Help me understand my options so I can make an informed decision; or
3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

### **Effective Date of Supported Decision-Making Agreement**

This supported decision-making agreement is effective immediately and will continue until (insert date) or until the agreement is terminated by my supporter or me or by operation of law.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**Consent of Supporter**

I, (name of supporter), consent to act as a supporter under this agreement in exchange for the opportunity to meaningfully participate in the life of this person and his/her pursuit of independent living.

(signature of supporter)

(printed name of supporter)

**Signature**

(my signature)

(my printed name)

(witness 1 signature)

(printed name of witness 1)

(witness 2 signature)

(printed name of witness 2)

State of

County of

This document was acknowledged before me

on \_\_\_\_\_ (date)

by \_\_\_\_\_ and \_\_\_\_\_

(name of adult with a disability)

(name of supporter)

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires:

**WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY**

IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT, OR EXPLOITATION TO THE DEPARTMENT OF HUMAN SERVICES BY CALLING THE ABUSE HOTLINE AT 1-888-APS-TENN (1-888-277-8366).

(b) A supported decision-making agreement may be in any form not inconsistent with subsection (a) and the other requirements of this chapter.

**34-9-110.**

(a) A person who receives the original or a copy of a supported decision-making agreement shall rely on the agreement.

(b) A person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

**34-9-111.** If a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to the department of human services pursuant to § 71-6-103(b).

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.